

When a person acts as an agent for an unknown or undisclosed principal and sells tangible personal property for the undisclosed principal, the agent incurs Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.1915. (This is a GIL.)

February 2, 2001

Dear Xxxxx:

This letter is in response to your letter dated December 4, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

As an artist, I collect and pay sales tax on the artwork that I sell. When I directly make the sale myself, I pay sales tax based on the full sale price. The situation is more confusing for me when the sale is made directly by a not for profit organization or is facilitated by such an organization. It is not clear to me in these situations if I should pay sales tax based on the full purchase price or on my share of the proceeds.

Below are three hypothetical situations that I often encounter. I would appreciate your indicating the correct basis I should use by circling the proper amount. Your response by the first week in January would be appreciated so I can prepare my tax return on a timely basis.

ASSUMPTIONS: The art work is the property of the artist and is offered for sale under a consignment type arrangement. A customer will buy the artwork for \$100. The not for profit organization will receive \$25 for its services and the artist will end up with \$75 in all cases.

Case 1: The sale of the artwork is handled by the not for profit organization as part of their normal operations. The customer pays the organization \$100 directly and the artist later receives a check from the organization for \$75.

Artist pays sales tax based on \$100 or \$75

Case 2: Identical to above, but the sale is part of the annual fund raiser for the organization.

Artist pays sales tax based on \$100 or \$75

Case 3: The organization facilitates contact between artist and customer as part of its normal operation. The customer pays the artist \$100 directly and the artist sends an expected (required) donation of \$25 to the not for profit organization.

Artist pays sales tax based on \$100 or \$75

Thank you for your help. To save time, you may just circle the proper answer for each case and return this letter to me.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.1910 regarding Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles. As you can see at subsection 130.1910(a), sales of artwork to persons who purchase such items for use and not for resale are within the Retailers' Occupation Tax Act. Persons engaged in the business of selling these items to purchasers for use or consumption are required to remit Retailers' Occupation Tax to the Department on their gross receipts from such sales. Please note, however, that persons who merely bring buyers and sellers together and do not engage in selling such property do not incur tax liability. For example, in Case 3 above, if the organization merely brings the buyer and seller together but is not engaged in selling the art work, then it is the artist that incurs tax on the gross receipts of \$100.

Enclosed is a copy of 86 Ill. Adm. Code 130.1915 concerning Auctioneers and Agents. When auctioneers or agents are involved in selling activities, the person who is liable for Retailers' Occupation Tax will depend on whether the auctioneer or agent is working on behalf of a disclosed or undisclosed principal. This rule applies to consignment transactions, as well. An auctioneer or agent acting on behalf of an unknown or undisclosed principal is considered to be the owner of the tangible personal property that will be sold and is responsible for paying Retailers' Occupation Tax on the gross receipts from the sale as well as filing a sales tax return.

However, if the auctioneer or agent is acting on behalf of a known or disclosed principal, the sale of the tangible personal property is taxable to the principal and not the auctioneer or agent. A principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. See subsection (b) of Section 130.1915. For example, if the artist is disclosed, the artist incurs Retailers' Occupation Tax liability. Please be advised, however, that if the tangible personal property sold would constitute an occasional sale by the disclosed principal, then the sale is not taxable. This is not likely to be the case with artists who are engaged in the business of selling their works. See the enclosed copy of 86 Ill. Adm. Code 130.110 concerning Occasional Sales. If tax is due, it is based upon the total selling price, including any commission.

Also enclosed is a copy of 86 Ill. Adm. Code 130.2005 concerning Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons. Occasional dinners, socials or other similar activities that are conducted by an exempt organization that has been issued an exemption identification "E" number by the Department are not taxable, whether or not such activities are open to the public. Subpart (a)(4)(A) of the enclosed regulation states that this exemption extends to occasional dinners, carnivals, bazaars and the like.

If an exempt organization sells items as part of a fundraising auction, in such a way that the organization, rather than the artist, would normally incur Retailers' Occupation Tax liability (see discussion above) at the fundraising event, its sales can qualify for this occasional dinners exemption. For purposes of this exemption, "occasional" means not more than twice in any given one-year period. Other than the two tax-free selling activities, all other sales made by exempt organizations are subject to Retailers' Occupation Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.